

BUSINESS ASSOCIATE AGREEMENT

Whereas, Verispan, L.L.C. (Business Associate) desires to provide disease management and wellness services (the "Services") to the Department of Veterans Affairs Veterans Health Administration (Covered Entity), and,

Whereas, in order for Business Associate to provide the Services to Covered Entity, Covered Entity discloses to Business Associate Protected Health Information (PHI) and Electronic Protected Health Information (E PHI) that are subject to protection under regulations issued by the Department of Health and Human Services, as mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"), and 45 CFR Parts 160 and 164, Subparts A and C, the Security Standard ("Security Rule"); and

Whereas, Department of Veterans Affairs Veterans Health Administration is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 CFR 160.103, and

Whereas, Verispan, L.L.C., as a recipient of PHI from Covered Entity in order to provide the Services to Covered Entity, is a "Business Associate" of Covered Entity as the term "Business Associate" is defined in the HIPAA implementing regulations, 45 CFR 160.103; and

Whereas, pursuant to the Privacy and Security Rules, business associates of covered entities must agree in writing to certain mandatory provisions regarding the Use and Disclosure of PHI and E PHI; and

Whereas, the purpose of this Business Associate Agreement (BAA) is to comply with the requirements of the Privacy and Security Rules, including, but not limited to, the business associate agreement requirements at 45 CFR 164.308(b), 164.314(a), 164.502(e), and 164.504(e), and as may be amended.

NOW, THEREFORE, the Covered Entity and Business Associate agree as follows:

1. Definitions and Applicability. Unless otherwise provided in this Agreement, capitalized terms have the same meanings as set forth in the Privacy and Security Rules. The term "Protected Health Information" or the abbreviation "PHI" shall include the term "Electronic Protected Health Information" and the abbreviation "E PHI" in this Agreement. "PHI" is limited to information that Business Associate creates or receives from or on behalf of Covered Entity. Provisions of this Agreement relating to the HIPAA Security Rule shall not take effect until April 14, 2005.

2. Ownership of PHI. As between Business Associate and Covered Entity, PHI provided to Business Associate or created, gathered or received by Business Associate, its agents and subcontractors under this Agreement is the property of Covered Entity.
3. Scope of Use and Disclosure by Business Associate of Protected Health Information.
 - A. Business Associate shall be permitted to make Use and Disclosure of PHI that is disclosed to it by Covered Entity, or created, gathered or received by Business Associate on behalf of Covered Entity, as necessary to perform its obligations under this Agreement, including as described in Exhibit A hereto, provided that the Covered Entity may make such Use or Disclosure under the Privacy and Security Rules, and the Use or Disclosure complies with the Covered Entity's minimum necessary policies and procedures that Covered Entity has provided or will provide to Business Associate.
 - B. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this BAA or Required by Law, Business Associate may:
 - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - (2) make a Disclosure of the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate; provided, however, that for disclosures for the purpose of Business Associate's proper management and administration. Business Associate has received from the third party written assurances that (a) the information will be held confidentially and Used or further Disclosure made only as Required By Law or for the purposes for which it was disclosed to the third party; and (b) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;
 - (3) Engage in Data Aggregation activities, consistent with the Privacy Rule; and
 - (4) De-identify any and all PHI created or received by Business Associate under this BAA; provided, that the de-identification conforms to the requirements of the Privacy Rule.

4. Obligations of Business Associate. In connection with its Use and Disclosure of PHI under this BAA, Business Associate agrees that it will:
- A. Use or make further Disclosure of PHI only as permitted or required by the Privacy Rule or this BAA or as Required by Law;
 - B. Use reasonable and appropriate safeguards to prevent Use or Disclosure of PHI other than as provided by this BAA;
 - C. To the extent practicable, mitigate any harmful effect of a Use or Disclosure of PHI by Business Associate in violation of this BAA that is known to Business Associate;
 - D. Promptly report to Covered Entity any Security Incident, or Use or Disclosure of PHI not provided for by this BAA, of which Business Associate becomes aware;
 - E. Require contractors, subcontractors or agents to whom Business Associate provides PHI to agree to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of reasonable and appropriate safeguards to protect PHI;
 - F. Make available to the Secretary of Health and Human Services Business Associate's internal practices, books and records, including policies and procedures, relating to the Use or Disclosure of PHI for purposes of determining Covered Entity's compliance with the Privacy and Security Rules, subject to any applicable legal privileges;
 - G. If the Business Associate maintains PHI in a Designated Record Set, maintain the information necessary to document the Disclosures of PHI sufficient to make an accounting of those Disclosures as required under the Privacy rule and the Privacy Act, 5 USC 552a, and within ten (10) days of receiving a request from Covered Entity, make available the information necessary for Covered Entity to make an accounting of Disclosures of PHI about an individual in the Designated Record Set or Covered Entity's Privacy Act System of Records;
 - H. If the Business Associate maintains PHI in a Designated Record Set or Privacy Act System of Records, within ten (10) days of receiving a written request from Covered Entity, make available PHI in the Designated Record Set or System of Records necessary for Covered Entity to respond to individuals' requests for access to PHI about them that is not in the possession of Covered Entity;

- I. If the Business Associate maintains PHI in a Designated Record Set or Privacy Act System of Records, within ten (10) days of receiving a written request from Covered Entity, incorporate any amendments or corrections to the PHI in the Designated Record Set or System or Records in accordance with the Privacy Rule and Privacy Act;
- J. Not make any Uses or Disclosures of PHI that Covered Entity would be prohibited from making except as permitted in this Agreement.
- K. When Business Associate is uncertain whether it may make a particular Use or Disclosure of PHI in performance of this BAA, the Business Associate will consult with the Covered Entity before making the Use or Disclosure.
- L. The Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality and integrity, and availability of the PHI that Business Associate receives, maintains, or transmits on behalf of the Covered Entity as required by the Privacy Rule. The Business Associate will meet the Business Associate requirements of the Security Rule on or before the enforcement date of April 21, 2005.
- M. Upon completion of the contract(s), the Business Associate shall return or destroy the PHI gathered, created, received or processed during the performance of this contract(s), and no data will be retained by the Business Associate, and any agents and subcontractors of the Business Associate. The Business Associate shall assure that all PHI has been returned to the Covered Entity or destroyed. If immediate return or destruction of all data is not possible, the Business Associate shall assure that all PHI retained will be safeguarded to prevent unauthorized Uses or Disclosures. Until the Business Associate has assurance, Covered Entity may withhold 15% of the final payment of the contract(s).

5. Obligations of Covered Entity. Covered Entity agrees that it:

- A. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under this Agreement;
- B. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under this Agreement; and;

- C. Will promptly notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes or revocation may affect Business Associate's ability to perform its obligations under this Agreement or the underlying agreement.

6. Termination.

- A. Termination for Cause. Material Breach of the BAA. Upon Covered Entity's knowledge of a material breach of this BAA by Business Associate, Covered Entity shall:

- (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

- (2) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, and if cure is not possible;

- (3) if neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary of Health and Human Services.

- B. Effect of Termination.

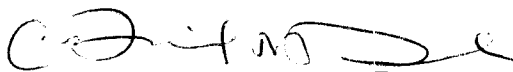
- (1) Upon termination of this Agreement, Business Associate will return or destroy all PHI received from Covered Entity or created, gathered or received by Business Associate and its agents and subcontractors on behalf of Covered Entity under this Agreement. Business Associate shall certify that all PHI has been returned to Covered Entity or destroyed. If immediate return or destruction of all PHI is not possible, as required under this Agreement any data retained will be safeguarded to prevent unauthorized Uses or Disclosures.

- 7. Amendment. Business Associate and Covered Entity agree to take such action as is necessary to amend this BAA for Covered Entity to comply with the requirements of the Privacy and Security Rules or other applicable law.
- 8. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 9. Other Applicable Law. This BAA does not, and is not intended to, abrogate any responsibilities of the parties under any other applicable law.

10. Effective Date. This BAA shall be effective on October 18, 2004.

**Department of Veterans Affairs
Veterans Health Administration**

Verispan, L.L.C.

By: 

Name: C. David McDaniel

Title: HIPAA Program Management Officer

Date: 10/26/04

By: 

Name: Peter Castagna

Title: COO

Date: 10/18/04